effectiveness which I have found surprising. And I gladly report that it is the best little book in a big field of which I know. It is probably ungracious to ask for more than the author has planned.

CHARLES E. CLARK†

MEN AND MEASURES IN THE LAW. By Arthur T. Vanderbilt.* New York: Alfred A. Knopf, 1949. Pp. xxi, 156. $3.00.

LANGUAGE AND THE LAW: THE SEMANTICS OF FORENSIC ENGLISH. By Frederick A. Philbrick. New York: The Macmillan Company, 1949. Pp. ix, 254. $3.75.

LANGUAGE OF POLITICS: STUDIES IN QUANTITATIVE SEMANTICS. By Harold D. Lasswell** and Associates. New York: George W. Stewart, 1949. Pp. 398. $5.75.

The goddess of justice may be blind, but she is certainly not mute. Indeed, the complaint has often been lodged against her that she talks too much, and (it has been insinuated) she says too little. She might even be called the garrulous goddess.

It is not recorded who lodged the first charge of verbosity against the garrulous goddess, but there are records of some eminent and telling criticisms of her language, or anyway that of her disciples. The history of real criticism in this field begins, appropriately enough, in 1776. In that year Jeremy Bentham (*A Fragment on Government;* etc.,) derided the stuffy conservatism of Blackstone and the other conventional legal writers by gibing that "the commonplace retinue of phrases," Justice, Right, Reason, the Law of Nature, "are but so many ways of intimating that a man is firmly persuaded of the truth of this or that moral proposition, though he either thinks he need not, or finds he can't, tell why." We must distinguish, he said, between *things* and *names;* "all else is but womanish scolding and childish altercation, which is sure to irritate, and which never can persuade. . . ."

Although influential in some other respects, Bentham did not have much immediate effect on that branch of legal thinking which modern scholars would call "legal semantics." It was a century later that the commonplace retinue of legal phrases and concepts was brilliantly satirized by Rudolph von Jhering, a German professor of law, in his *Heaven of Juristic Concepts.* About the same time our own Oliver Wendell Holmes, Jr., was beginning to attack the formal verbalisms of traditional legal thinking with keen realistic analysis. In 1913 he told a meeting of the Harvard Law School Association of New York, "If I may ride a hobby for an instant, I should say we need to

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think things instead of words . . ." Since Holmes, there has been a certain amount of critical examination of legal language, or symbolism, chiefly in the writings of the so-called "legal realists," but most of this has been largely incidental to the consideration of other matters.

If the practitioners in any field are completely dependent upon words it is in the field of law. It is difficult to think of any other profession in which there is not some working with tangibles, some operational definitions. But not so in law. Everything here depends upon the verbal formula. Whether the words, written or spoken, of two parties are or are not called "a contract" decides a lawsuit. Whether an act is called "negligent," or "malicious," or "intentional," decides the fate of a man. Always it is the name which is given to the event that is important in the law.

Some of the details and effects of this dependence upon verbalization are suggested in Justice Vanderbilt's book *Men and Measures in the Law.* Justice Vanderbilt does not explicitly relate his discussion to this aspect of the subject, but his facts and analysis tell their own story.

His book is divided into three topical divisions. The first two chapters are concerned with "Taking Inventory" of the law. The third chapter considers "The Growth of Substantive Law"; and the last two chapters discuss "Procedure—The Stumbling Block."

In his inventory, Justice Vanderbilt notes that in the time of Bacon and Coke there were, in all, about 5,000 reported English cases. The number had doubled by 1775; increased a hundredfold by 1890; and by 1940 had reached 1,750,000. Today the largest law library has 600,000 *volumes,* and a good working bar library requires 20,000 volumes. Similarly, in an average biennium, Congress and the state legislatures pass over 50,000 *pages* of legislation to supplement the more than quarter of a million *pages* of legislation already making up our statute books! Add to this the mass of administrative regulations, and the charge of verbosity seems proved against the garrulous goddess.

Even worse, says Justice Vanderbilt, than the mere mass of material which comprises the corpus juris, is "the unknowability of its vast wilderness." There is no general system of classification of statutes, and not even any general digest or encyclopedia of statutory or administrative law. There are digests of decisions, but the scholar who attempts to apply law review standards of research to the ordinary problems arising in the practice of law (which presumably are the objects of primary concern) will quickly reach a definite and unflattering conclusion as to the adequacy of the digest systems.

The great stumbling block to progress in the law, Justice Vanderbilt believes, is procedure. By this, however, he does not mean the limited number of technical rules usually comprehended in that term. By procedure he means what might be called methodology. "The truth is," he says, "that we need a

new concept of procedure. At the same time that we are simplifying and rationalizing our rules of pleading and practice, we need to acquire the point of view that procedure comprehends everything which the lawyer has to do with a case from the moment that he is brought into it." Earlier Justice Vanderbilt makes it plain that such an improved methodology for law must include a new and more precise terminology.

Beyond this Justice Vanderbilt does not go. In this thin volume he principally measures the failures of the professional men in the law, and suggests the need for improvement. He does not particularly emphasize the importance of an analysis of terminology in achieving progress; indeed, it is not clear that he is fully aware of the importance of this problem. His book is an interesting and stimulating summary of the views of a mature, moderate and intelligent legal mind. It is certainly not revolutionary in its implications, nor even radical. Yet it is plain from his analysis that some way must be found for dealing with the flood of words that threatens to engulf all legal thinking if the lawyers are ever to be able to swim upstream to higher intellectual ground.

Anyone aware of this problem should be delighted to find a book entitled *Language and the Law: The Semantics of Forensic English,* especially when the author casually refers to building on the work of Ogden and Richards (*The Meaning of Meaning*) and Holmes. Unfortunately the delight is rudely disappointed by Philbrick's book. It is true that it deals with semantics, of a kind and to a degree. But his observations on legal semantics can be summed up in a single sentence: To persuade a jury, use terms with favorable emotional connotations in referring to aspects of your own case, and terms of unfavorable emotional connotations in referring to your opponent's case. Furthermore, there can be little doubt as to just how literally he means this advice to be taken. The book throughout is little more than a collection of illustrations and anecdotes of particular cases (mostly criminal trials) in which one or another appeal to sentiment was more or less successful in moving a jury. One of his earliest illustrations tells how the lawyers secured the acquittal of the lynchers of Willie Earle, a young Southern negro, without going to the trouble of presenting any testimony. In the closing arguments the corpus delicti "was commonly referred to as *a dead nigger* or *a dead nigger boy,* and there was a strong suggestion that the law was unreasonable in taking note of the death of so insignificant a creature." The author comments, "The closing arguments of these lawyers, which occupied several hours, are instructive examples for study. They must have been effective, for all the defendants were acquitted by the jury."

This book bears about the same relation to semantics that a book on seduction, or a collection of "French art photos," would bear to physiology. If

it is semantics, it is the semantics of the carnival barker and the sideshow shill. We do not need more instruction on how to subvert, but on how to improve the administration of justice. Vanderbilt would most certainly not consider Philbrick's book a contribution to that improvement in legal methodology which is so urgently needed.

At nearly the opposite pole in the manner of its approach to the use of words is Dr. Lasswell's book, *Language of Politics: Studies in Quantitative Semantics*. This book is actually a collection of papers, edited by Dr. Lasswell. The papers are concerned with what may be more familiarly known to readers as "content analysis." This consists of establishing analytical categories for application to particular kinds of subject matter by "validating" these categories by the judgment of a representative group of experts. The subject matter is then analyzed by tabulating the frequency of the occurrence of symbols falling within the various categories, the tabulations also being made by groups of experts. The results are expressible in precise quantitative terms, and are subject to all the mathematical tests for reliability, dispersion and central tendency which modern statistical methods have developed.

Regardless of whether or not the intelligent reader is aware of all the technical implications of the mathematical formulae, he can hardly fail to be impressed with the scientific objectivity of the method. Beyond this, even a reader to whom the multiplication table is a hopeless maze can understand the general conclusions and the possibilities of the technique. The principal studies included in the book consist of analyses of nazi and communist propaganda. One application of the studies was their use in the trial of alleged foreign agents. The testimony of Dr. Lasswell, and the results of his scientific content analysis, were admitted in evidence by the courts as part of the proof that certain publications were actually nazi propaganda vehicles, and not independent publications, as they claimed .

Other studies included in the book consist of content analyses of slogans used by the Communist Party and the Comintern during the period from 1918 to 1943. The changes in emphasis and direction of propaganda effort are traced, not in broad outline, but in precise detail and with quantitative measures.

The possibility of the application of this technique of analysis to judicial decisions is too obvious to be overlooked. It is to be hoped that some serious studies along this line are undertaken soon. But, while this book indicates potential techniques for dealing with difficult problems of legal terminology, it is no more than suggestive. It is not directly concerned with, and it offers no immediate answers to, any specific legal problems. Rather than criticism, this simply means that however suggestive it may be, the book is not a direct attack on the problems of legal semantics.

However, it is a sorry reflection on the profession, and particularly on the law schools, that no one has yet undertaken the scholarly and rigorous examination of the terminological and conceptual foundations of law that is so badly needed. Some aspects of the problem have been considered in the light of modern principles of psychology by Jerome Frank in 1930 (*Law and the Modern Mind*) and by E. S. Robinson (*Law and the Lawyers*) and Thurman Arnold (*The Symbols of Government*) in 1935. Yet it is significant that in the most recent and most pretentious collection of essays on legal philosophy yet made, of thirty-eight eminent legal scholars not a single one thought it worthwhile to consider the operating concepts of law. One of the contributors to the massive *Interpretations of Modern Legal Philosophies,* Professor Stone of Sydney, Australia, did indeed consider the application of legal concepts to specific cases in a general way. The rest of the contributors were almost wholly concerned with such airy legal abstractions as "natural law," "positive law," "justice and expediency," "juridical values," and other similar emotional slogans. Comparing the language used by "modern legal philosophers" with the Communist Party slogans analyzed by Dr. Lasswell's associates suggests that the legal philosophers are more elegant in their choice of words, less practical in their choice of subjects, and about equal to the Communist Party leadership in the relative balance of intellectual content and emotional appeal.

Why the law should be thus lacking in the kind of analytical thinking which has proved so productive in other fields is a puzzling problem. Perhaps it is simply an inexplicable aspect of the general phenomenon known as "cultural lag." In any event, it would seem that the law schools must bear much of the responsibility both for the present and the future generations of practicing lawyers and teachers. So far as I am aware, no American law school has a course in semantics, either required or optional. (To mention only a few of the excellent texts available, there are the seminal Ogden and Richards, *The Meaning of Meaning;* Stuart Chase, *The Tyranny of Words;* S. I. Hayakawa, *Language in Action,* and his recent book, *Language, Thought and Action;* Charles Morris, *Signs, Language and Behaviour;* and, the most difficult and rigorous, Alfred Korzybski, *Science and Sanity.*)

The only tools that a lawyer has are words, and to give him these tools without warning him of the difficulties and dangers in the use of all such symbolic tools is something like teaching a medical student surgery without mentioning antisepsis or asepsis. Analysis is hindered rather than helped by attaching emotional labels. However, the reader who is interested in value judgments will readily enough think of the effective terms in which to describe a medical school which would graduate doctors taught to use scalpels on patients without sterilization.

The three books under review epitomize, in a way, the present situation. Justice Vanderbilt recognizes the need for radical improvements in legal procedure and at least intimates that new techniques for dealing with our terminology must constitute a fundamental part of any important improvement. Mr. Philbrick illustrates the preoccupation with trial-success that characterizes our law schools today to the exclusion of their more important functions. Professor Lasswell suggests some new approaches and techniques that might very well be adapted to the problems of legal semantics. Unfortunately the problems remain virtually untouched. The garrulous goddess continues to babble without a competent interpreter.

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INTERNATIONAL CONTRACTS, by Geoffrey Chevalier Cheshire.* Glasgow: Jackson, Son & Company, 1948. Pp. 90. 6s.

Because *International Contracts* is in fact a lecture delivered before a diversified audience at the University of Glasgow, it might be supposed that the work is merely a popularization of well-known legal principles. Such is most certainly not the case. In the preface to the third edition of his standard work on English conflict of laws, Professor Cheshire expressed dissatisfaction with the treatment given therein to the contract conflicts law.[1] This lucid and brilliantly written lecture is Professor Cheshire's attempt to amend and reanalyze certain topics in this area.

According to the 19th century English scholar Westlake, the "proper law" of the contract (the law which governs a contract generally) is the law of that country with which the contract has "the most real connection."[2] However, English opinions have consistently stated that the proper law of the contract is that law which the parties intend to apply. In most cases these different theories will lead to the same result. If the parties have expressed no intention as to governing law, an intention will be presumed in "the light of the subject matter and of the surrounding circumstances."[3] The presumption will normally select the law of that country which is most substantially connected with the contract. But when the parties have expressly agreed to be bound by the law of a country having no or perhaps only a slight factual connection with the transaction the theories may lead to practical differences. Professor Cheshire launches a heavy attack on the intention of the parties rule if that rule is interpreted to mean that the parties are permitted an unrestricted

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1. CHESHIRE, PRIVATE INTERNATIONAL LAW, iv-v (3rd ed. 1947).

2. WESTLAKE, PRIVATE INTERNATIONAL LAW 289 (6th ed. 1922).

3. Bowen L. J. in Jacobs v. Crédit Lyonnais, 12 Q.B.D. 589, 599-600 (1884).